

Practice Information Notes

The purpose of Practice Information Notes is to review current information and knowledge, outline the key issues and examine the implications for foster care, and provide best practice recommendations for fostering service providers and links to key documents. Each service will decide on practice based on the needs of the young people in its care and its foster carer population.

Exemptions (England)

The purpose of this Practice Information Note is to:

- Review the legislation surrounding exemptions
- Outline the requirements of the regulations and statutory guidance in relation to the placement of four or more unrelated children with one foster carer

References to Legislation, Regulation and Statutory Guidance (England):

- The Children Act 1989 Sch 7: Foster Parents: Limits on number of foster children
- Fostering Regulations (England) 2011
- The Care Planning, Placement and Case Review (England) Regulations 2010
- The Care Planning, Placement and Case Review and Fostering Services (Miscellaneous Amendments) Regulations 2013
- The Children Act 1989 Guidance and Regulations Volume 4: Fostering Services (2011)
- Assessment and approval of foster carers: Amendments to the Children Act 1989 Guidance and Regulations Volume 4: Fostering Services: (July 2013)
- Fostering Services: National Minimum Standards 2011

Key points

- An exemption is always required when more than three unrelated children are placed in one fostering household.
- The usual fostering limit of three contained within the Children Act 1989 recognises that foster care is designed to provide quality care tailored to children's individual needs in foster homes that provide a care experience as close to that of 'normal family life' as possible.
- In deciding whether to grant an exemption, the nominated office must make an informed decision as to whether the welfare of the fostered children (and any other children who are or will be living in the accommodation) will be safeguarded and promoted.

- Approval of foster carers does not require terms of approval to be specified, so long as the service is satisfied that the carer has been assessed as suitable to care for and meet the needs of the children for whom they are approved to care.
- It is possible to approve a foster carer to care for more than three children, provided that the panel and decision maker are satisfied that the foster carer(s) can safeguard and promote the children's welfare although the placement of more than three unrelated children will require an exemption.
- The regulatory requirements mean that for an exemption to be granted, a foster carer's terms of approval should allow them to care for more than three children, *unless* the children are outside the terms of approval and are being placed in an emergency for less than six working days.
- If a foster carer is approved to care for the children being placed (i.e. they are *within* the foster carers' terms of approval in relation to number, age, gender, placement type etc,) *and* the children to be placed are named *and* an exemption has been agreed, nothing further needs to be done except to abide by any conditions set by the local authority granting the exemption.
- If a placement is made *outside* of a foster carer's terms of approval, the placement must be terminated after 6 working days or the foster carers' terms of approval must be changed by review.

Introduction

Sch 7 of the Children Act 1989 limits the number of children who may be fostered by a foster carer. The 'usual fostering limit' is set at three children. This means that no foster carer may foster more than three children unless:

- a) The foster children are all siblings in relation to each other *or*
- b) The local authority in whose area the foster carer lives exempts the foster carer from the usual fostering limit in relation to specific placements *and* the foster carers' terms of approval allow it.

The Department for Education have included a section on the Usual Fostering Limit in the amendments to the Children Act 1989 Volume 4: Fostering Services: Assessment and Approval of Foster Carers: Amendments to the Children Act 1989 Guidance and Regulations (p16-17). This is intended to clarify the requirements around exemptions.

What is an exemption?

In general, any individual who wishes to be registered to care for four or more unrelated looked after children is required to register as a Children's Home. Registration as a foster carer usually limits the number of unrelated children that can be cared for at any one time to three. An 'exemption' refers to the powers given to local authorities under the Children Act to exempt a foster carer living within their area from the requirement to register as a Children's Home, in order to care for four or more specific named children. Exemptions have to be applied for and agreed before a fostering agency can agree to any of their foster carers having more than three unrelated children placed.

What are a foster carer's terms of approval?

When a fostering service provider decides to approve someone as a foster carer, it must also decide whether to specify any terms of approval.

Statutory Guidance (Vol 4: Fostering Services para 5.41) states that 'terms of approval may specify, for instance, that they may foster only a specific named child or children or may identify a maximum number of placements which may be made at any one time or an age range for children fostered.'

Terms may also include factors such as short term or long-term placements, short break care, or inclusion in a particular fostering scheme'. It is not essential to specify terms of approval.

A foster carers' approval may therefore contain no such terms, provided a fostering service is satisfied that the foster carer is suitable to care for children for whom their approval allows them to care. In such situations, foster carers are enabled to care for any child or children whom the service deems appropriate, subject to the usual matching processes.

Who decides whether to grant an exemption?

The power to exempt a foster carer from the requirement to register as a Children's Home if caring for more than three looked after children is given to the local authority *in which the foster carer lives*. The local authority should nominate an officer (for example, a senior manager within the fostering service) with delegated powers to grant exemptions from the usual fostering limit and ensure that fostering services and agencies operating within the area are aware of the procedures to be followed in requesting such exemptions.

If a foster carer is registered with their own local authority's fostering service and the children to be placed are in the care of that local authority, the officer making the decision will have access to information about the foster carers and the needs of the children to be placed. However, if the foster carer is registered with another fostering service provider (whether a different local authority or an independent fostering provider) and/or the children to be placed are in the care of a different local authority, the person making the decision will need to be given information about the foster carers and/or about the children to be placed. This will need to be provided by the fostering service provider who is applying for the exemption. Local authorities may find it helpful to develop decision-making protocols between themselves and fostering agencies who have registered foster carers living within their area.

What information needs to be taken into consideration when considering whether to grant an exemption?

The Children Act 1989 (Sch 7) states that in considering whether to exempt a person from the requirement to register as a Children's Home, a local authority must have regard in particular to:

- The number of children the person proposes to foster;
- The arrangements which the person proposes for the care and accommodation of the fostered children;
- The intended and likely relationship between the person and the fostered children;
- The period of time for which s/he proposes to foster the children; and
- Whether the welfare of the fostered children (and any other children who are or will be living in the accommodation) will be safeguarded and promoted.

Duty to notify in writing

A local authority granting an exemption must notify the foster carer in writing:

- That s/he is exempted;
- Of the children described by name, whom s/he may foster; and
- Of any condition to which the exemption is subject.

How long does an exemption last?

An exemption is not time-limited, unless a time limit is set as a condition to which it is subject (see above). However, a local authority may, at any time, vary or cancel an exemption or impose, vary or cancel a condition to which the exemption is subject. This must be done by notice in writing. The local authority should also consider how it will review any exemption to the usual fostering limit. However, any terms of approval must be compatible with the number of children the foster carer is caring for, even if an exemption to the usual fostering limit has been granted.

If the placement is outside the foster carer's terms of approval, it can only be made in an emergency and for less than six days as stated in Reg 23 of the The Care Planning, Placement and Case Review (England) Regulations 2010 (see below).

What is the relationship between exemptions and 'temporary variations' to a foster carer's terms of approval?

An exemption relates only to the placement of more than three unrelated children with a foster carer. The power to exempt a foster carer from the requirement to register as a Children's Home in such circumstances is contained within the Children Act 1989.

The 'temporary variation to a foster carer's terms of approval' is more accurately described as 'permission to place a child outside a carer's terms of approval in an emergency'.

In situations where it is necessary to place a child in an emergency, Reg 23 of the Care Planning, Placement and Case Review (England) Regulations 2010 allows 'a responsible authority to place the child with any local authority foster parent who has been approved, even if the terms of that approval are not consistent with the placement, provided that the placement is for no longer than six working days'. At the end of those six working days, the responsible authority must terminate the placement, unless the terms of approval have been amended to be consistent with the placement.

The local authority can only agree an 'exemption' *if* the specified placements are within the foster carer's terms of approval *or* it is necessary to place in an emergency under Reg 23. In the latter circumstances, the placement must be terminated after 6 days or the foster carer's terms of approval must be amended. If the placement is to be terminated within six working days, a change of terms of approval is not required.

Changing terms of approval within six working days of the child being placed

Terms of approval can only be amended following a review as outlined in Reg 28 of the Fostering Regulations (England) 2011 and the decision maker's approval of and agreement to the amended terms.

In July 2013, Regulation 28 of The Fostering Regulations (England) 2011 was amended (as set out in The Care Planning, Placement and Case Review and Fostering Services (Miscellaneous Amendments) Regulations 2013 (8)) to allow this decision to be made without the need to issue a qualifying determination first. The issuing of a qualifying determination previously delayed the implementation of any change for 28 days, even where the foster carers were in agreement with the change. Where the fostering service provider proposes only to change the terms of approval, a decision can now be made to change them with immediate effect provided that:

- The service provides a statement setting out whether the fostering service provider considers that the foster carer or member of their household (including any children placed) may have additional support needs as a result of the proposed change and, if so, how those needs will be met; and
- The service requests and receives the foster carer's agreement in writing to the proposed revision of terms.

Six days is a short period of time to undertake a review, especially as placement outside a foster carer's terms of approval is only permitted where it is necessary to place in an emergency. The Fostering Network suggests that fostering service providers may need to develop a process for a quick review for use in such circumstances and establish an agreement with the decision maker that s/he will deal with such reviews as a matter of priority.

Is an exemption needed when one foster child 'sleeps over' in another foster home?

It is important to differentiate between a child being cared for under care planning regulations, such as 'respite' care or being temporarily cared for by another foster carer, and their having an informal sleep over or overnight stay with a friend who may also be foster care experienced. The term and concept of a sleep over is frequently used within the Mockingbird Model of foster carer support but is not a term currently used within fostering or care planning legislation in England. All children and young people should, as far as possible, be able to take part in everyday and acceptable age-appropriate activities as would reasonably be agreed by the parents of their peers. Things to consider if a child in foster care has a 'sleep over':

- Under delegated authority It should be normal practice for the responsible local authority, in agreement with those who hold parental responsibility, to delegate to a child's foster carer the day to day decision making, including allowing a child to stay overnight with their friends.
- If a child has regular sleep overs, and the arrangement becomes more about caring for the child than sleep overs with friends, to consider if this is instead a 'respite' arrangement in which case an exemption will need to be considered.

The Fostering Network makes the following recommendations

- Fostering services should consider how they record foster carer approvals. In particular, whether they wish to specify terms of approval for foster carers in all circumstances, or only when it is necessary to prevent them from offering care to children of an age, gender, or number for whom they are assessed as not suitable.
- Fostering services may wish to develop procedures to enable them to review and, where appropriate, amend a foster carer's terms of approval within six days of making an emergency placement outside the existing terms of approval. This should only be considered where the placement is both in the child's best interests and the foster carer is assessed as being suitable to offer the care provided.
- Every local authority should have a nominated officer with delegated powers to grant exemptions. They should ensure that fostering services and agencies operating within their local authority area are aware of the procedures to be followed in requesting exemptions.
- The granting of exemptions will be made only in exceptional circumstances where the welfare of the children requires it. However, the introduction of blanket policies regarding exemptions is considered unhelpful as this may prevent decisions based on the best interests of children being made in individual cases.
- The agreement of an exemption enabling a child to be placed in a permanent placement may, in exceptional circumstances, be appropriate. However, the local authority agreeing the exemption will need to be clear with the responsible authority and the fostering service provider how they will manage the additional uncertainty of the placement being dependent on the continuation of the exemption so as not to undermine the permanency of the placement.

- Local authorities may find it helpful to develop decision-making protocols between themselves and fostering agencies who have registered foster carers living within their area (including setting out the information they require about any children to be placed, any children already placed, the foster carers and members of their household, and the views of others involved) in order to make a decision.

Links to key documents

- The Children Act 1989 Sch 7: Foster Parents: Limits on number of foster children
<http://www.legislation.gov.uk/ukpga/1989/41/schedule/7>
- Fostering Regulations (England) 2011
<http://www.legislation.gov.uk/uksi/2011/581/contents/made>
- The Care Planning, Placement and Case Review (England) Regulations 2010
<http://www.legislation.gov.uk/uksi/2010/959/made>
- The Care Planning, Placement and Case Review and Fostering Services (Miscellaneous Amendments) Regulations 2013
<http://www.legislation.gov.uk/uksi/2013/984/contents/made>
- The Children Act 1989 Guidance and Regulations Volume 4: Fostering Services (2011)
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/274220/Children_Act_1989_fostering_services.pdf
- Assessment and approval of foster carers: Amendments to the Children Act 1989 Guidance and Regulations Volume 4: Fostering Services: (July 2013)
<http://www.education.gov.uk/childrenandyoungpeople/families/fostercare/g00225430/assess-approv-foster-care>
- Fostering Services: National Minimum Standards 2011
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/192705/NMS_Fostering_Services.pdf

The practice support team

The practice support team comprises regional consultants covering England. The team provides a range of services to the Fostering Network members including:

- Practice advice information support and guidance
- Consultancy
- Practice briefings
- Training delivery

If you would like further information about the practice support team and what we can do to support you, please get in touch with Sarah McEnhill, Head of Practice on **0141 204 1400** otherwise you can email sarah.mcenhill@fostering.net

For more information please visit our website: thefosteringnetwork.org.uk/advice-information/advice/practice-support

Updated August 2022